

Order

Michigan Supreme Court
Lansing, Michigan

October 26, 2005

Clifford W. Taylor,
Chief Justice

126561

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

PHOENIX INVESTMENT HOLDING
COMPANY, INC., WOODLAND
EXCAVATING, L.L.C., and WILLACKER
HOMES, INC.,
Plaintiffs-Appellees,

v

SC: 126561
COA: 246398
Oakland CC: 01-035158-CK

NOSAN & SILVERMAN HOMES, L.L.C.,
SILVERMAN DEVELOPMENT CO.,
SILVERMAN HOMES, INC., SILVERMAN
CONSTRUCTION CO. and TOLL
BROTHERS, INC.,
Defendants-Appellants.

On October 19, 2005, the Court heard oral argument on the application for leave to appeal the April 20, 2004 judgment of the Court of Appeals. On order of the Court, the application for leave to appeal is again considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we VACATE in part the judgment of the Court of Appeals and REINSTATE in part the May 7, 2002 order of the Oakland Circuit Court, as to plaintiffs' Count II. The circuit court properly dismissed Count II because the liquidated damages provision also applied to non-monetary default, such as the failure to enter into excavation contracts. We REMAND this case to the Oakland Circuit Court for further proceedings consistent with this order and the non-vacated portion of the Court of Appeals judgment.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 26, 2005

Corbin R. Davis

Clerk